

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL JOHN DENHAM,

Plaintiff,

v.

S. SHERMAN, et al.,

Defendants.

Case No. 1:20-cv-01645-DAD-BAK (HBK) (PC)

ORDER DENYING PLAINTIFF'S MOTION
TO STAY

(Doc. 24)

ORDER DIRECTING PLAINTIFF TO FILE
RESPONSE TO DEFENDANTS' MOTION TO
DISMISS, OR, IN THE ALTERNATIVE, TO
FILE A SECOND AMENDED COMPLAINT

THIRTY (30) DAY DEADLINE

Pending before the Court is "Plaintiff's Request to Stay Defendants' Motion to Dismiss Until After Court has Completed Screening Pursuant to 28 U.S.C. § 1915A(a); Declaration in Support Thereof." (Doc. 24). For the reasons set forth below, the Court denies Plaintiff's Motion and directs Plaintiff, within thirty (30) days, to file a response to Defendant's Motion to Dismiss or, as is his right as a matter of law under Fed. R. Civ. P. 15(a)(1)(B), to file a second amended complaint.

I. Relevant Background

This action was removed from the Sacramento County Superior Court by Defendants Brasil, Cisneros, Collins, Cooper, Davis Elszy, Maltman, Martin, Milam, Perkins, Ronquillo and

1 Sherman on November 13, 2020. (Doc. 1). Defendants requested screening of Plaintiff Paul
2 John Denham's complaint pursuant to 28 U.S.C. § 1915A(a). (*Id.* at 3). Further, Defendants
3 requested a 30-day extension of time "from service of the Court's screening order to file a
4 response to the Complaint." (*Id.* at 4).

5 On November 12, 2021, the previously assigned magistrate judge issued a first screening
6 order. Specifically, the magistrate judge found Plaintiff failed to "establish a causal connection
7 between any of the individual defendants' actions or inactions" in Plaintiff's Eighth Amendment
8 deliberate indifference claim (Doc. 8 at 6), failed to state a cognizable conspiracy claim under the
9 Eighth Amendment (*id.* at 7) and failed to exhaust his administrative remedies and failed "to show
10 that any particular defendant breached a legal duty to him or caused the injuries of which he
11 complains" as to his state law negligence claim (*id.* at 7-8). The Court concluded that Plaintiff's
12 complaint failed to state a claim upon which relief could be granted, and because amendment might
13 cure the deficiencies identified in the screening order, Plaintiff was given 21 days within which to
14 do so, or to file a notice of voluntary dismissal. (*Id.* at 8).

15 On June 10, 2022, Plaintiff filed a first amended complaint. (Doc. 21). Thereafter,
16 Defendants filed a Motion to Dismiss Plaintiff's Fourteenth Amendment Claim, Conspiracy to
17 Violate Civil Rights Claim, and State-Law Negligence Claim in the First Amended Complaint.
18 (Doc. 23). On July 7, 2022, Plaintiff filed a document titled "Plaintiff's Request to Stay
19 Defendants' Motion to Dismiss Until After Court has Completed Screening Pursuant to 28 U.S.C.
20 § 1915A(a); Declaration in Support Thereof." (Doc. 24).

21 **II. Discussion**

22 Plaintiff requests the Court stay Defendants' motion to dismiss certain claims in his first
23 amended complaint until the Court "has found cognizable claims" following completion of
24 screening pursuant to 28 U.S.C. § 1915A. (Doc. 24 at 2). Plaintiff contends he "cannot oppose
25 Defendants' motion to dismiss because it will cause [him] to violate the Court's November 19,
26 2020, order precluding [him] from proceeding 'with legal action against a governmental entity or
27 individual in this Court until the Court screens the complaint and finds that it states cognizable
28 claims against named defendants.'" (*Id.* at 2). Plaintiff states "[d]isobeying such order subjects

1 [him] to imposition of sanctions including dismissal” and that the Court’s May 23, 2022, order
2 “notes the Court lacks jurisdiction because it ‘does not have an actual case or controversy before
3 it...Here, there is no operative complaint in this action for which the Court has found cognizable
4 claims.’” (*Id.* at 2-3). Plaintiff seeks a stay of “Defendants’ motion to dismiss until such time that
5 this Court has completed screening and determined that it has jurisdiction over [his] civil rights
6 case.” (*Id.* at 3).

7 First, the Court’s jurisdiction is not in question. At the time of the Court’s May 23, 2022
8 Order Granting in Part Plaintiff’s Third Motion for Extension of Time to File First Amended
9 Complaint, Plaintiff’s original complaint had been previously identified as failing to state a claim
10 upon which relief could be granted and the first amended complaint had not yet been filed. With
11 the filing of Plaintiff’s first amended complaint, the operative complaint, the Court’s jurisdiction
12 is not in question. Furthermore, the reference to jurisdiction in the May 23, 2022 Order
13 specifically pertained to Plaintiff’s request that this Court issue an order directing the Attorney
14 General’s Office to informally respond to Plaintiff’s allegations concerning his access to legal
15 materials while incarcerated at California State Prison, Corcoran.

16 Second, Plaintiff’s concerns regarding sanctions for disobeying this Court’s November
17 2020 order—by opposing Defendants’ now pending motion to dismiss prior to screening of his
18 first amended complaint—are misplaced. The November 19, 2020 First Informational Order in
19 Prisoner/Civil Detainee Civil Rights Case is a preliminary order providing prisoner litigants with
20 general information and rules generally applicable to prisoner *pro se* actions. When litigation
21 commences, certain actions taken by a party or parties will require further action on the part of
22 another party. Where one party has filed a motion, Local Rule 230(l) allows for a response by the
23 party against whom the motion is directed. Here, Defendants’ have filed a motion to dismiss
24 certain claims asserted by Plaintiff. Plaintiff is entitled to oppose the motion. Sanctions against
25 Plaintiff for responding to Defendants’ motion would be wholly inappropriate and not
26 contemplated by the Court.

27 Next, Plaintiff is advised that the legal standard that would be applied to Defendants’
28 motion to dismiss is the same legal standard applied during screening under § 1915A. *See*

1 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (the legal standard for screening and for
2 12(b)(6) motions is the same). As a result, Defendants' challenges to certain claims asserted in
3 Plaintiff's first amended complaint would be subject to the same scrutiny those claims would
4 undergo at screening.

5 In sum, there is no reason to stay Defendants' motion to dismiss. Plaintiff shall be
6 afforded thirty days within which to file any opposition to Defendants' motion to dismiss.
7 Alternatively, Plaintiff may elect to file a second amended complaint. *See Fed. R. Civ. P. Rule*
8 *15(a)(1)(B) ([Amendments Before Trial, Amending as a Matter of Course] "A party may amend*
9 *its pleading once as a matter of course . . . if the pleading is one to which a responsive pleading is*
10 *required, 21 days after service of a responsive pleading or 21 days after service of a motion under*
11 *Rule 12(b), (e), or (f), whichever is earlier").*¹

12 ACCORDINGLY, it is hereby ORDERED:

13 1. Plaintiff's Motion to Stay Defendants' Pending Motion to Dismiss (Doc. 24) is
14 DENIED; and
15 2. Plaintiff SHALL file either a response in opposition to Defendants' Motion to Dismiss
16 **within 30 days** from the date of service of this order; or, in the alternative, Plaintiff
17 shall file a second amended complaint **within 30 days** from the date of service of this
18 order.

19
20 Dated: July 13, 2022


21 HELENA M. BARCH-KUCHTA
22 UNITED STATES MAGISTRATE JUDGE
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24
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26 ¹ *See Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (holding a "[p]laintiff's
27 15(a)(2) amendment, filed first in time, cannot be construed as a waiver or exhaustion of his automatic
right to amend under 15(a)(1), so long as that amendment was timely." *See also T.T. v. Cnty. of San
Diego*, No. 3:19-CV-00407-AJB-AGS, 2020 WL 516146, at *3 (S.D. Cal. Jan. 31, 2020).